

**State of New Hampshire  
DEPARTMENT OF ENVIRONMENTAL SERVICES**

6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095  
(603) 271-3503 FAX (603) 271-2982



David and Mary Gagnon  
7 Potanipo Hill Road  
Brookline, NH 03033

Re: Tax Map U-5, Lots # 6&7  
Big Diamond Pond  
Stewartstown, New Hampshire

**ADMINISTRATIVE ORDER  
BY CONSENT  
No. WD-01-34**

**A. INTRODUCTION**

This Administrative Order by Consent ("Order") is issued by the Department of Environmental Services, Water Division, to David and Mary Gagnon pursuant to RSA 483-B:5. This order is effective upon signature by all parties.

**B. PARTIES**

1. The Department of Environmental Services, Water Division ("DES"), is a duly constituted administrative agency of the State of New Hampshire, having its principal offices at 6 Hazen Drive, Concord, NH.
2. David and Mary Gagnon are individuals having a mailing address of 7 Potanipo Hill Road, Brookline, NH 03033.

**C. STATEMENT OF FACTS AND LAW**

1. David and Mary Gagnon are the owners of a parcel of land located on the shore of Big Diamond Pond in Stewartstown, NH. The parcel is identified as Lots #6 & #7 on Stewartstown Tax Map No. U-5 ("the Lot"). A state approved septic system (CA# 191124) was constructed on the property in 1992, prior to the effective date of the CSPA. The approved septic plan shows the proposed house location approximately 30 feet from the reference line of Big Diamond Pond.
2. On or about July 17, 2001, DES personnel performed an inspection of the Lot and observed a foundation hole and forms in place that were approximately 30 feet from the reference line of Big Diamond Pond.
3. Later that same day, Mr. Gagnon had telephone conversations with two DES employees to discuss the 50-foot primary building line setback as established by the Comprehensive Shoreland Protection Act ("CSPA"). Mr. Gagnon was advised by both DES employees not to continue with construction until the matter could be resolved. He was informed of the option to apply for a variance.

4. On or about July 17, 2001, Mr. Gagnon called the Shoreland Office and requested that a variance form be faxed to him. He stated that the cement contractor was on-site, ready to pour the foundation, and inquired about the chances of the variance request being approved. Mr. Gagnon was told that he could not be given any assurance that the variance would be approved, and was again told that he should not proceed with construction until the status of his variance request had been determined.

5. Within a day or two of July 17, 2001, DES learned that the foundation on the Lot had been poured.

#### D. DETERMINATION OF VIOLATIONS

1. David and Mary Gagnon violated RSA 483-B:9, II (b) by constructing a foundation within 50 feet of the reference line of Big Diamond Pond.

#### E. ORDER


Based on the above findings and determinations, DES hereby orders David and Mary Gagnon as follows:

1. Within 30 days of this Administrative Order by Consent, submit a restoration plan detailing how the Lot will be restored. The following should be included in the report:
  - a. A to-scale plot plan of the Lot, showing all lot lines, location of the foundation, and the reference line of Big Diamond Pond;
  - b. An identification of the proposed plantings, including species, location and diameter at breast height (dbh), with a key that identifies each species, and;
  - c. A construction sequence as to how and a timetable indicating when the restoration will be achieved.
2. Carry out the restoration plan, upon approval and as conditioned by DES.
3. Based upon successfully meeting the conditions of this Administrative Order by Consent, DES agrees to allow the structure to remain in its current location utilizing the approved and installed septic system.

## F. CONSENT AND WAIVER OF APPEAL

1. By execution of this Administrative Order by Consent, David and Mary Gagnon agree that this Order shall apply to and be binding upon David and Mary Gagnon, their successors and assigns, and agrees that this Order may be entered and enforced by a court of competent jurisdiction.

2. By execution of this Administrative Order by Consent, David and Mary Gagnon waive any right to appeal this Administrative Order by Consent provided by statute, rule or common law, including without limitation the right to appeal to the Water Council, and waives any right to object to the entry and enforcement of this Order by a court of competent jurisdiction.

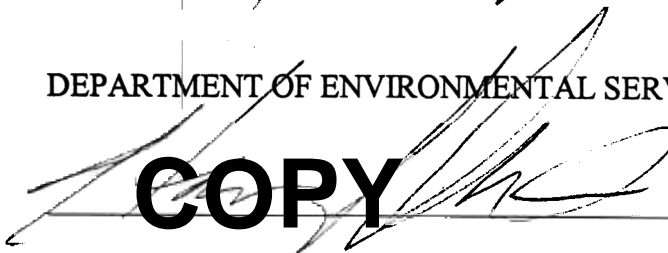
**COPY**  
  
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David Gagnon

Date: 10/24/01

**COPY**  
  
\_\_\_\_\_  
Mary Gagnon

Date: 10/24/01

DEPARTMENT OF ENVIRONMENTAL SERVICES

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Harry T. Stewart, P.E., Director  
Water Division

Date: 11/7/01

**COPY**  
  
\_\_\_\_\_  
George Dana Bisbee  
Assistant Commissioner

Date: 11/7/01

### CERTIFIED MAIL

cc: Gretchen C. Rule, Enforcement Coordinator-NHDES  
Chris Helms, Environmental Protection Bureau-DoJ  
Public Information & Permitting-NHDES  
Shoreland Program, Watershed Unit-NHDES  
Coos Registry of Deeds  
Stewartstown Conservation Commission  
Stewartstown ZBA Chairperson  
Stewartstown Town Administrator  
DES Subsurface Bureau